

Daniel P. Wierzba (Ariz. Bar No. 028297)
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
Email: dwierzba@seyfarth.com

Pamela Q. Devata (Illinois Bar No. 6275731)
John W. Drury (Illinois Bar No. 6282785)
(*Pro Hac Vice* Pending)
SEYFARTH SHAW LLP
131 South Dearborn Street, Suite 2400
Chicago, Illinois 60603
Telephone: (312) 460-5000
Facsimile: (312) 460-7000
Email: pdevata@seyfarth.com
jdrury@seyfarth.com

Attorneys for Defendant Data Diver Technologies, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

STEPHANIE MYERS,

Plaintiff,

v.

DATA DIVER TECHNOLOGIES, LLC,

Defendant.

Case No. _____

**NOTICE OF REMOVAL WITH
VERIFICATION OF DANIEL
WIERZBA**

Removal from Superior Court, County of
Maricopa, Case No.: CV2015-052476

**TO: THE HONORABLE JUDGES AND CLERK OF THE ABOVE-ENTITLED
COURT**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and
1446, Defendant Data Diver Technologies, LLC (“Data Diver”), by and through its
attorneys, Seyfarth Shaw LLP, files this Notice of Removal with respect to Case No.
CV2015-052476, filed in the Superior Court of the State of Arizona, County of Maricopa.
In support of this Notice, Data Diver states as follows:

I. Background

1. On June 15, 2015, Plaintiff Stephanie Myers filed a purported class action Complaint in the Superior Court of Maricopa County, entitled *Stephanie Myers v. Data Diver Technologies, LLC*, Case No. CV2015-052476 (the “Superior Court Action”). True and accurate copies of all process, pleadings, and orders filed in the Superior Court Action are attached hereto as Exhibit A.

2. On July 2, 2015, Data Diver was served with a summons and a copy of the Complaint. There are no other defendants in this matter

3. In accordance with 28 U.S.C. § 1446(b), Data Diver filed this Notice of Removal within thirty (30) days of receipt of Plaintiff’s Complaint, and within one year of the commencement of the Superior Court Action.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this District and division embrace Maricopa County, Arizona, the place where the Superior Court Action was filed.

5. Written notice of the filing of this Notice of Removal is being delivered to Plaintiff through her counsel of record. Pursuant to 28 U.S.C. § 1446 and L.R. Civ. 3.6(a), a copy of the Notice of Removal will be filed with the Clerk of the Court of the Superior Court, County of Maricopa. *See* Exhibit B.

6. Under 28 U.S.C. § 1331, “the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.” Therefore, this Court has original jurisdiction over the instant action based on federal question jurisdiction.

7. In addition, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff’s claim brought under the Texas Business and Commercial Code.

8. Data Diver files this Notice in accordance with Fed. R. Civ. P. 11.

9. By filing this Notice of Removal, Data Diver does not concede nor waive any defense to this action, including that Plaintiff lacks standing to bring this action.

1 Data Diver reserves all defenses relating to the Court's jurisdiction and the justiciability
2 of this action.

3 **II. Removal is Proper Because this Court has Subject Matter Jurisdiction**
4 **Pursuant to 28 U.S.C. §§ 1331 and 1367.**

5 **A. Federal Question Jurisdiction Exists Because Plaintiff's Complaint**
6 **Asserts a Claim Under Federal Law.**

7 10. 28 U.S.C. § 1331 provides that "the district courts shall have original
8 jurisdiction of all civil actions arising under the Constitution, laws or treaties of the
9 United States."

10 11. Plaintiff's Complaint asserts a claim under the federal Fair Credit Reporting
11 Act, 15 U.S.C. § 1681c(a). *See* Compl., ¶¶ 55-61.

12 12. Pursuant to 28 U.S.C. § 1331, this Court therefore has original federal
13 question jurisdiction over Plaintiff's FCRA claim because this claim arises under the laws
14 of the United States. Accordingly, removal of Plaintiff's Complaint is proper pursuant to
15 28 U.S.C. § 1331.

16 **B. Supplemental Jurisdiction Exists Over Plaintiff's State Law Claim.**

17 13. 28 U.S.C. § 1367 provides that "in any civil action of which the district
18 courts have original jurisdiction, the district courts shall have supplemental jurisdiction
19 over all other claims that are so related to the claims in the action with such original
20 jurisdiction that they form part of the same case or controversy under Article III of the
21 United States Constitution."

22 14. In Count II of the Complaint, Plaintiff asserts a claim under the Texas
23 Business and Commercial Code. *See* Compl. ¶¶ 62-68.

24 15. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over
25 Count II of the Complaint. Count II arises out of the same alleged conduct that forms the
26 basis for Plaintiff's FCRA claim in Count I of the Complaint, and thus forms part of the
27 same case or controversy under Article III of the United States Constitution. Moreover,
28 Plaintiff's state law claim does not raise novel or complex issues of state law (which, in
any event, is the law of another jurisdiction from where Plaintiff filed her lawsuit), nor

1 does it substantially predominate over Plaintiff's FCRA claim. Moreover, Plaintiff's
2 state law claim is likely preempted by the FCRA.

3 16. Accordingly, supplemental jurisdiction over Count II of the Complaint is
4 proper.

5 WHEREFORE, Data Diver respectfully requests that this Notice of Removal be
6 filed, that the Superior Court Action be removed to and proceed hereafter in this Court,
7 and that no further proceedings be had in the Superior Court action.

8
9 **DATED: July 30, 2015**

Respectfully Submitted,

10 SEYFARTH SHAW LLP

11
12 By: /s/ Daniel P. Wierzba

13 Daniel P. Wierzba

14 Pamela Q. Devata

John W. Drury

Attorneys for Defendant

15 Data Diver Technologies, LLC
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VERIFICATION OF DANIEL P. WIERZBA

I, Daniel P. Wierzba, verify as follows:

1. I am an active member in good standing of the State Bar of Arizona and an attorney with the law firm of Seyfarth Shaw, L.L.P., counsel of record for Defendant Data Diver Technologies, LLC. I have firsthand knowledge of the matters set forth herein. I submit this verification pursuant to L.R. Civ. P. 3.6(b) and Fed. R. Civ. P. 11.

2. Attached as Exhibit A are true and correct copies of all pleadings and other documents filed in the state court civil action originally commenced in the Superior Court of the State of Arizona, in and for the County of Maricopa, entitled *Stephanie Myers, Plaintiff v. Data Diver Technologies, LLC, Defendant*, Case No. CV2015-052476.

I verify that the foregoing is true and correct to the best of my knowledge.

Executed this 30th day of July, 2015, at Los Angeles, California.

/s/ Daniel P. Wierzba
Daniel P. Wierzba

CERTIFICATE OF SERVICE

I, Daniel Wierzba, an attorney, certify that I caused a copy of the attached **NOTICE OF REMOVAL WITH VERIFICATION OF DANIEL WIERZBA** to be served upon the following counsel of record through the Court's electronic case filing system, and by U.S. Mail, on July 30, 2015, upon the following counsel of record:

Paul B. Mengedoth
20909 N. 90th Place, Suite 211
Scottsdale, AZ 85255

/s/ Daniel P. Wierzba

Daniel Wierzba